THE HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition (S/B) No. 897 of 2001

Phool Singh S/O Shri Bhim Singh,
R/O 17, Govind Garh, Dehradun.

… Petitioner.

Versus

1. Executive Engineer Establishment Division, Irrigation Department, Roorkee, District Haridwar.
2. The Accountant General,(Accounts & Claims) II U.P. Allahabad.
3. Finance Controller, State of U.P. Irrigation Department, through Engineer in Chief, Lucknow.
4. State of U.P. through Finance Secretary, Lucknow.

… Respondents.

Sri M.C. Pant, learned counsel for petitioner.
Smt. Beena Pandey, learned Standing Counsel (UP Govt.) for the respondents.

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

Dated July 13, 2006.

Heard learned counsel for the rival parties and perused the entire material on record.

By means of this writ petition, the petitioner has prayed for a direction of this Court in the nature of certiorari to quash the impugned order dated 31-8-2001 and 26.5.2000 contained in Annexure Nos. 11 and 5 to the writ petition. By order dated 26.5.2000, re-fixation of the salary of the petitioner has been done and as per directions issued by the Finance Controller in the Office of the Chief Engineer (Irrigation) Department n 14.04.2000. After this re-fixation was done, the Executive Engineer, Establishment Division Roorkee vide letter dated 31-8-2001 initiated recovery proceedings for a sum of Rs. 1,53,140/- on the directions of the

Accountant General, (Accounts and Entitlement) II, U.P. Allahabad, as contained in letter dated 31-8-2001 (Annexure No. 11).

In the writ petition it has been stated by the petitioners that the deductions have already been made and total deduction of Rs. 86,153-50 was made till date from the commutation of pension of the petitioner. The balance to be recovered remains in terms of the impugned order dated 6-7-2001 of the Accountant General II concerned Rs. 66,986-50. The learned counsel for the petitioner has invited our attention to the letter dated 31-7-2001, by which it appears that this amount sought to be recovered by the impugned order contained in Annexure No.10 is inclusive of the excess payment of salary as well as withdrawal of advance from the G.P. Fund and interest thereon.

Counter Affidavit has been filed in which the Pass Book of the petitioner and re-fixation of the salary has been justified by the State Government. It has been stated in the counter affidavit that the petitioner had been paid excess amount of Rs. 66,571-50 on account of incorrect/wrong fixation of salary of the petitioner. Apart from this, the petitioner received Rs. 19,602-50. According to this factual statement of figures, only sum of Rs. 86,174/- was to be recovered from the petitioner. That indicates that Rs. 86,174/- interest has been charged.

So far as the payment of interest on the excessive payment of salary is concerned, that cannot be charged for the reason that it was not a fault of the petitioner in drawing the excess amount, but it was the fault of the department in fixation of the salary of the petitioner, therefore, for no fault of the petitioner, the petitioner cannot be penalized by imposing interest on excess payment of salary. Therefore, the interest part on the excess payment of salary cannot be recovered.

The principal amount, i.e. after excess payment of salary plus withdrawal of gratuity have been paid, only Rs. 21/- are left to be paid by the petitioner. In the counter affidavit, there is no mention as to recovery of Rs.93,980/- as mentioned in the letter dated 31-7-2001 exists against the petitioner.

So far as the payment of amount outstanding to the credit of the subscriber of the G.P.Fund is concerned in paragraph no. 6 of the Counter Affidavit filed on behalf of the Accountant General it has been explained that the petitioner had been overpaid inasmuch as Rs. 1,53,140/- including the interest up-to June 2001 on account of various undue advantage and over drawals from the General Provident Fund frequently taken in the past. Thus, recovery of Rs. 1,53,140/- was necessary to be recovered from the petitioner along with interest till date of recovery in accordance with Rule 11(6) of the G.P. Fund Rules, 1985 framed by the State of U.P. Thus, after payment of Rs. 86,153/-, the petitioner has yet to pay Rs. 1,53,140/- plus Rs. 21/- (as held above) with a total of Rs. 1,53,161-00 to be recovered after adjustment of the deductions made from the commutation of pension amount of Rs. 86,153/-.

The Apex Court in the case of ***" Gabriel Saver Fernades and others Vs. State of Karnataka" [1995 Supp (1) Supreme Court Cases, 149]*** has held that ***" Service Law- Pay- Different pay scales, on the basis of qualifications- Validity- Higher pay scale for Talatis and Village Accountants possession SSLC qualification and lower pay scale for those without such qualification- Held, does not involve invidious discrimination- Appellants although not eligible to the higher scale, since had already retired, payment made to them in the higher scale during service period 'restrained from being recovered."*** Therefore, in view of the laid down by the Apex Court excess payment made due to fixation of salary, the same cannot be recovered after the retirement of the petitioner.

In view of the aforesaid dictum of the Hon'ble Apex Court, we provide that the amount of Rs.66,571-50 as interest thereon shall not be recovered from the petitioner. After making the aforesaid adjustment, as directed by us, and the money recovered from him by commutation of his pension, if some balance remains to be recovered, that may be recovered as arrears of land revenue.

With the above directions, the writ petition is disposed of accordingly. Costs easy.

(B.S. Verma, J.) **(P.C. Verma, J.)**

RCP